

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2096

April 11, 1973

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STATE OF NEW JERSEY
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BULLETIN 2096

April 11, 1973

1. COURT DECISIONS - CARMAZINO v. NEWARK - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2047-71

BETTY CARMAZINO
t/a NEW UNCLE JOE'S

Plaintiff-Appellant,

v.

ROBERT E. BOWER, DIRECTOR
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF NEW JERSEY.

Defendants-Respondents.

Argued January 22, 1973 - Decided February 27, 1973.

Before Judges Carton, Mintz, and Horn.

On appeal from Division of Alcoholic Beverage Control.

Mr. Abraham I. Mayer argued the cause for appellant
(Messrs. Mayer and Mayer, attorneys).

Mr. David S. Piltzer, Deputy Attorney General,
argued the cause for respondent Division of Alcoholic
Beverage Control (Mr. George F. Kugler, Jr., Attorney
General, attorney).

PER CURIAM

(Appeal from the Director's decision in Re Betty Carmazino,
Bulletin 2044, Item 2. Director affirmed. Opinion not
approved for publication by Court Committee on Opinions).

2. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matter of Disciplinary
Proceedings against the following
licensees:

CONCLUSIONS
AND ORDERS

- A. Anna K. Rosella t/a Rosella's Country Club Tavern
Route #527, Millhurst Rd. PO Englishtown (Manalapan Twp)
Charge: False statement in application- criminally
disqualified person in interest - front- Prior dissimilar
record on hours violation- Suspension for balance of term-
with leave to correct after 76 days- effective Mar. 8, 1973
Order: February 28, 1973. S-9493
Lic: C-8
- B. Ralph & John's Tavern, Inc.
384 Monmouth St. Jersey City
Charge: 'Hours' Regulation- Six prior violations since 1956-
Prior notice to licensee in Bulletin 1863 Item 2 -License
suspended 180 days upon transfer of ownership otherwise
revocation - effective Mar.15, 1973- Order: March 1, 1973. S-9303
Lic: C-123
- C. John W. Lupu Memorial Post 306 Inc.
707 Hawthorne Ave. Middlesex
Charge: Club licensee sold to non-members - net suspension
for 10 days - effective Mar.12, 1973- Order: March 1, 1973. S-9466
Lic: CB-1
- D. Lt. Charles 'Buddy' Lewis Veterans Home Ass'n. Inc.
6 E. Delaware Pkwy, Lower Twp. (Cape May Co)
Charge: Club licensee sold to non-members- net suspension
for 10 days- effective Mar. 12, 1973- Order: March 1, 1973. S-9503
Lic: CB-2
- E. Brookside Inn, Inc.
92 Water St. Milford.
Charge: Hours ordinance - sale to 3 minors, 16, 20, 20.
Suspension 15 days on hours and 25 days on minor sale -
with remission net 32 days suspension- effective Mar. 19, 1973
Order: March 2, 1973. Amended Order 3/8/73 suspension effective 4/16/73 S-9472
Lic: C-2
- F. John A. O'Donnell t/a O'Donnell's
263 Broadway, Bayonne.
Charge: Failed to have copy of application on premises in
violation of Rule 16c of Reg. 20. Fine of \$200 in lieu of
5 day net suspension- Order: March 2, 1973. S-9435
Lic: C-123
- G. Felix's Restaurant & Cocktail Lounge t/a Haddonview Lounge
D2 and D3 Westmont Plaza, Cuthbert and MacArthur Blvd.
Haddon Twp. PO Westmont.
Charge; Purchase alcoholic beverages by retailer from unauth-
orized source and failed to keep account books on premises
License suspended 15 days on 1st charge, 20 on 2nd charge, less 7 for plea.
Suspension effective Mar. 15, 1973 - Order : March 2, 1973. S-9461
Lic: C-11
- H. Nick Miskulin
4801 Park Ave., Union City
Charge: Permitted solicitation for prostitution- false statement
in application- prior dissimilar record- suspension 90 days on
1st charge, 10 on 2nd plus 5 for prior record-net 84 days.
Effective March 15, 1973 - Order: March 2, 1973. S-9383
Lic: C-40
- I. Vincent A, Sorbello t/a Lodi Lanes
58 Terhune Ave., Lodi
Charge: Gambling, numbers and football bets -net suspension
of 72 days- Effective March 14, 1973- Order: March 2, 1973. S-9431
Lic: C-11

- J. Norma Wilkinson
201- 70th St., Guttenberg
Charge: Sale to minors, 15, 15, 19, 19 - Prior similar record within 5 years- suspension of 45 days plus 45 days for prior record- net 72 days- Effective March 14, 1973.
Order: March 2, 1973. S-9512
Lic: C-27
- K. Katherine & Michael Pesce t/a Lou's Inn
418 Valley Brook Ave., Lyndhurst
Charge: 'Hours' Ordinance- prior dissimilar record- 15 day suspension plus 5 for record- net 15 days- Fine of \$600 in lieu of suspension- Order: March 5, 1973. S-9500
Lic: C-28
- L. Manuel C. Gomes t/a Cantanhede International Bar & Restaurant
195 Ferry St., Newark.
Charge: Employment of non-citizen (Rule 6, Reg 13) - prior dissimilar record - fine of \$400 in lieu of 15 day suspension - Order: March 5, 1973. S-9456
Lic: C-367
- M. Thomas J. Brady t/a Johnny & Brady's
992 South Orange Ave., Newark.
Charge 'Hours' Ordinance- fine of \$600 in lieu of 15 day suspension by municipality - Order: March 6, 1973. Mun. Rev. 5527
Lic: C-750
- N. 170 South Orange Avenue Corp. t/a Little Joe's
168 South Orange Ave., Newark.
Charge: 'Hours' & Regulation- fine of \$400 in lieu of 10 day net suspension - Order: March 6, 1973. S-9374
Lic: C-145
- O. Flo-Ron, Inc. t/a Penn Liquor Mart
4913 Westfield Ave., Pennsauken
Charge: Sale to minors, 19, 19 - Prior similar record within 5 years- fine of \$600 in lieu of suspension for 10 days doubled less 5- net 15 - Order: March 8, 1973. S-9455
Lic: D-1
- P. 594 South Orange Aveune, Inc.
594 So. Orange Ave., Newark.
Charge: Failure to have employee list on premises (Rule 16c, Reg.20) - fine of \$200 in lieu of 5 day net suspension - Order: March 8, 1973. S-9425
Lic: C-143
- Q. Fran-Jon, Inc.
49 Main St. South River,
Charge: Mislabeling 4 bottles- fine of \$600 in lieu of 15 day net suspension - Order: March 8, 1973. S-9347
Lic: C-21
- R. 524 Broadway, Inc. t/a Chester Liquors
524 Broadway, Newark.
Charge: Sale to minor - fine of \$800 in lieu of 20 day suspension by municipality - Order: March 13, 1973. Mun.Rev.5552
Lic: D-21
- S. Tally Ho Enterprises, Inc.
943 Magie Ave., Union, N.J.
Charge: Mislabeling 9 bottles- fine of \$2,940 in lieu of 28 days net suspension - Order: March 13, 1973. S-9494
Lic: C-42
- T. Don-Anne, Inc. t/a Toby's Bar-Liquors
425 Bound Brook Rd., Middlesex,
Charge: Mislabeling 2 bottles - fine of \$750 in lieu of 10 day net suspension - Order: March 13, 1973. S-9473
Lic: C-10

- U. Elizabeth Habegger t/a Betty's
123 Schuyler Ave., Kearny,
Charge: Sale to minors, both 18, - fine of \$400 in lieu of
10 day net suspension- Order: March 14, 1973. S-9498
Lic: C-23
- V. R & M Lounge, Inc. t/a Commerce Lounge
205 Commerce St., Newark. S-9334
Lic: C-166
Charge: Permitting indecent dance by employee - prior dis-
similar record within 5 years - 30 day suspension on charge
plus 5 for record -net suspension 28 days -Effective March 29, 1973.
Order: March 15, 1973.
- W. New Edison Bar Corp. t/a New Edison Bar.
410 Broadway, Newark. Mun. Rev. 5440
Lic: C-432
Order: February 27, 1973 staying municipal suspen-
sion effective Feb. 26, 1973 for 10 days pending
consideration of application to pay fine.
- X. Mayfair Wines & Liquors
1014 So. Orange Ave., Newark. Mun. Rev. 5521
Lic: D-35
Supplemental Order: March 5, 1973 accepting fine
of \$500 in lieu of 10 day suspension heretofore imposed.
- Y. John W. Lupu Memorial Post 306 Inc.
707 Hawthorne Ave., Middlesex. S-9466
Lic: CB-1
Amended Order: March 6, 1973 - deferment of sus-
pension heretofore imposed of 10 days - new eff-
ective date March 19, 1973.
- Z. Roosevelt Lounge, Inc.
292 Market St., Paterson S-9155
Lic: C-200
Amended Order: March 8, 1973 - accepting fine of
\$560 in lieu of 28 day suspension heretofore imposed.
- Z(1). Wertz, Inc. t/a D'Scene
Route 9, PO South Amboy (Sayreville Boro) Mun. Rev. 5596
Lic: C-28
Order: March 13, 1973 staying municipal suspension
effective Mar. 15, 1973 for 10 days pending con-
sideration of application to pay fine.
- Z(2). Albert and Helen Mikuli and Audrey Ann Costa t/a The Foursome Tavern
264 Ferry St., Newark. Mun Rev 5600
Lic: C-272
Order: March 15, 1973 staying municipal suspension
effective March 19, 1973 for 10 days pending consider-
ation of application to pay fine.

Robert E. Bower
Director

3. APPELLATE DECISIONS - WILLNER'S LIQUORS, INC. v. FAIR LAWN ET AL.

Willner's Liquors, Inc.,)
 Appellant,)
 v.)
 Borough Council of the Borough)
 of Fair Lawn, and Sel-Rite Bar)
 and Liquors, Inc.,)
 Respondents.)
 -----)
 Max Kempin, et als.,)
 Appellants,)
 v.)
 Borough Council of the Borough)
 of Fair Lawn, and Sel-Rite Bar)
 and Liquors, Inc.,)
 Respondents.)

On Appeal
 CONCLUSIONS
 and
 ORDER

-----)
 Jack Ballan, Esq., Attorney for Appellant Willner's Liquors, Inc.
 Kreiger and Karas, Esqs., by Seymour M. Karas, Esq., Attorneys for
 Appellants Max Kempin, et als.
 Floyd V. Amoresano, Esq., by Robert L. Garabaldi, Esq., Attorney
 for Respondent Borough
 Hein, Smith, Mooney & Berezin, Esqs., by Robert J. Maloof, Esq.,
 Attorneys for Respondent Sel-Rite

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is a consolidated Hearer's report on separate but inter-related actions, involving common questions of law and fact instituted against respondents Borough of Fair Lawn (hereinafter Borough) and Sel-Rite Bar and Liquors, Inc., (hereinafter Sel-Rite) challenging the action of the Borough which by resolution unanimously approved a place-to-place transfer of a plenary retail consumption license from premises on Saddle River Road to premises to be built at 17-59 River Road, Fair Lawn.

A consolidated hearing de novo was held pursuant to Rule 6 of State Regulation No. 15. Full opportunity was afforded counsel to introduce evidence and cross-examine witnesses.

At the outset of the hearing, counsel stipulated to the admission into evidence of a series of photographs showing the area embraced by the proposed licensed premises; a copy of the Borough's resolution of September 12, 1972 approving the transfer; a copy of the street map of the Borough indicating the location of existing plenary retail licensees; plans of the interior and exterior of the building in which the licensed premises is to be housed; application of appellant for the transfer and the minutes of the Borough of its meeting of September 12, 1972.

The relevant portion of the resolution of the Borough adopted September 12, 1972 sets forth the following:

"...WHEREAS, the Mayor and Council has further considered the objections raised in opposition to said application all of which said objections can be fairly summarized as bearing on such issues as whether the granting of said application would place too many bars in one area of the community, that the location of the applied for premises would create a traffic hazard, and that fears were expressed that the location would become a 'hang-out' for undesirables, all of which said objections having been carefully weighed by said Mayor and Council as well as the substantial proofs submitted by the applicant in behalf of said application as a result of which the Mayor and Council is satisfied that by reason of the intended minimal use of the premises for bar purposes with the major emphasis of the operation being directed to a package store business observing regular business hours for package stores together with the fact that the location in question is situated at a considerable distance from the only other two bars operating in this general area of the Borough, as well as the fact that the license is to be moved from an area which is basically totally residential into a commercial area as part of a shopping complex creating little additional impact on the parking and traffic controls now available in this area, which location being also considerably removed from neighboring residences, all of which said factors lead this Body to conclude that the granting of said application will not adversely affect or create dangers to public health, safety, morals, or to the general welfare....and [the premises] shall be completed in accordance with the plans and specifications on file in the office of the Borough Clerk which said plans specifically provide for a bar area consisting of eight (8) stools to be utilized in conjunction with a package store operation...."

The aforementioned resolution has been set forth at some length in that testimony introduced by appellants of Mayor Nicholas R. Felice and of Councilmen Robert W. Landzettel and Nat Sprechman, offered by the Borough was in direct support of the resolution. The Mayor affirmed that he had thoroughly investigated the application and the proposed area and, in his opinion, there is a need for the proposed facility in the area. Both councilmen corroborated the opinions expressed in the resolution.

Appellants introduced the testimony of Joseph M. Fahey, whose specific relationship to Sel-Rite was not disclosed, who, in the application filed is listed as a principal stockholder. He stated that the proposed premises would accommodate a bar with eight stools, but the principal space would be devoted to the sale of package goods. He estimated that fifteen percent of the store's area would be devoted to bar use.

Ida Basch testified that she objects to the presence of the license in the area in which she is a resident because persons may then drink there and drive away through the shopping area and on to the surrounding streets.

Seymour M. Karas, the attorney representing both himself and certain appellants, contended in his testimony, that the large number of teen-agers employed in the surrounding businesses and others who congregated there would now have an immediate available outlet for alcoholic beverage purchases.

I

The first contention of appellants is that the Borough did not reasonably honor opposing local sentiment. That contention was bolstered by the inclusion into evidence of a petition filed with the Borough opposing the grant of transfer, and the admission of several letters of citizens critical of Sel-Rite's application. These were taken into consideration by the Borough before its determination was made.

While petitions have a place as an expression of public sentiment and may ordinarily be considered in matters of this kind, their voice is not controlling upon the action of the Council. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970). So long as they are considered and their value weighed by the Borough prior to its determination, the Borough's action cannot be considered arbitrary in this respect. Cf. Millie & Paul's Corporation v. Hampton, Bulletin 1860, Item 2.

II

Appellants challenge the alleged change of character of the premises as primarily a "package goods" store rather than a bar typical of "C" licenses. From the testimony, Sel-Rite intends the erection of a bar with eight stools which will embrace fifteen percent of the total area of this facility. This balance of space use will not be violative of those guidelines set forth by the Director in maximizing the permissible package area of any class "C" licensee.

III

Appellants further contend that Sel-Rite's application is violative of N.J.S.A. 33:1-12, which restricts any other businesses conducted in "C" licensed premises than the sale of alcoholic beverages. They point out that there is located in the shopping area a drug store which existence is violative of the statute. Such contention is patently absurd as the licensed premises includes only the store in which the proposed licensed business is to be carried on. No testimony was introduced to indicate that any business other than the alcoholic beverage business would be engaged in by the licensee. Thus, this contention lacks merit and must be rejected.

IV

The central contention of appellants is that the Borough did not exercise proper discretion in granting the transfer in that a sufficient investigation was not made, and that the transfer to the proposed location is not in the best interests of the community. The testimony of Mayor Felice is completely to the contrary. He and his colleagues did investigate the licensee and the area of proposed licensed premises and they were familiar with the area to be serviced and the needs thereof. Fanwood v. Rocco, 59 N.J. Super. 306; (App. Div. 1960) aff'd 33 N.J. 404 (1960); Ward v. Scott, 16 N.J. 16 (1954).

In evaluating the actions of the local municipal issuing authority in the granting or rejection of a transfer, such as this, the Director is governed by the principle that its action will not be disturbed if properly based. In Lyons Farms Tavern v. Newark, supra. at 303, the court stated:

"...Once the municipal board has decided to grant or withhold approval of a premises...application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record." (emphasis supplied)

I find nothing brought out by the testimony, exhibits or extensive argument of counsel that would, in any way, indicate an abuse of discretion or unreasonableness by the Borough. From the outset of the initial application to the development and passage of its resolution the contrary is apparent; the actions of the Borough illustrate the proper serious and conscientious approach local officials should take in exercising their statutory authority in these matters.

V

Finally, appellants contend that Fahey, sole stockholder of Sel-Rite holds a major interest in another licensed premises in the Borough and, in addition holds a security interest in another licensed premises located elsewhere. While the record is unclear, it may be accepted that Fahey holds a note and security interest in a restaurant in another community as well as his interest in the two licensed premises in the Borough. Counsel for respondent argues that such interest falls within the exemption to the general proscription as found in N.J.S.A. 33:1-12.32, which exemption excludes certain hotels and restaurants selling alcoholic beverages for on-premises consumption only. In the absence of any proof to the contrary, it must necessarily be assumed that the premises wherein Fahey allegedly holds the aforementioned security interest is such a restaurant. That assumption is dispositive of the contention.

Following the hearings in this Division, counsel for Willner's furnished a memorandum reviewing the position of appellants, focusing upon Fahey's alleged third interest in a license, which has been hereinabove considered, and citing an abuse of discretion by the Borough in granting the transfer. Reference was made to Paul v. Brass Rail Liquors, 31 N.J. Super. 211, 214 (App. Div. 1954) which holds:

"As is well understood a license to vend intoxicating liquor is merely a temporary permit or privilege; it is not a contract; it is not property. R.S. 33:1-26; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). The issuance, renewal and transfer of liquor licenses rest in the sound discretion of the issuing authority and its action will not be judicially disturbed in the absence of a clear abuse of discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949)."

See also Lyons Farms Tavern v. Newark, supra.

That doctrine, long followed by this Division, is particularly applicable here. I, therefore, conclude that appellants have failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, I recommend that the action of the Borough be affirmed, and the appeals be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for appellants, and answers to said exceptions were filed by the attorneys for the respondents, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report, and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 26th day of February 1973,

ORDERED that the action of respondent Borough Council of the Borough of Fair Lawn be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

Robert E. Bower
Director

4. APPELLATE DECISIONS - COOKE v. HOPE.

W. Edward Cooke,)	
)	
Appellant,)	
v.)	On Appeal
)	
Township Committee of the)	CONCLUSIONS and ORDER
Township of Hope,)	
)	
Respondent.)	

George J. Benson, Esq., Attorney for Appellant
 Arthur K. Sirkis, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Hope (hereinafter Committee) which by resolution of September 6, 1972, denied both renewal of appellant's plenary retail consumption license and an application to transfer said license from its present location to property on the east side of Route 521.

The petition of appeal alleges that appellant acquired his license in 1964 and renewed it annually until denied by resolution complained of. An application to transfer the license was made concurrently with the renewal application about the same time that an application for a variance was made to the local Board of Adjustment to permit the license use at the new premises. The Committee denied renewal and transfer applications before the matter respecting the variance could be heard by the Board of Adjustment.

The answer filed on behalf of the Committee alleged that appellant had no premises to which the license could apply, either in being or prospective; appellant had no lease for any proposed premises nor could he furnish proof that a variance had been obtained, and he filed no plans for any proposed building on the anticipated location.

Preliminarily to the hearing held in this Division, counsel for the Committee filed a brief alleging that as a factual contention appellant had been given a hearing on the applications before the Committee on June 6, 1972, at which time it appeared that he had no right to use any premises for the license nor had plans for any building on a suggested location. He was, however, given sixty days to produce such proofs, which he never did. It was further alleged that, during most of the eight years appellant enjoyed his license, he had no business operation in being.

When the matter came on for hearing pursuant to Rule 6 of State Regulation No. 15, counsel stipulated the admission of appellant's application. Opportunity was afforded the parties to introduce evidence and to cross-examine witnesses. During the course of the hearing the following exhibits were admitted into evidence: (a) letter to the Board of Adjustment dated July 27, 1972; (b) architectural rendering of proposed premises (which was returned to appellant); (c) letter of a County Court Judge dated February 10, 1970, and (d) letter of the then municipal attorney dated February 27, 1970.

Appellant Walter Edward Cooke testified that he acquired his license in 1964 as a result of a person-to-person transfer, but the issuance of the license was withheld pending his acquiring a situs for the license. To that end, in 1964 and thereafter he sought informal approval of varied locations; these attempts were unsuccessful so he attempted to restore the building in which the license had been located, but that endeavor was unsuccessful. He did receive approval of a place-to-place transfer to another location; however, the owner of the proposed transfer site did not cooperate with him, so a further application to transfer the license to property owned by his father was made, and denied by the Committee.

Appellant explained that the Committee's action was appealed and that legal action caused a delay from 1967 into 1970. According to his version of the outcome, the case was "settled." (From the copies of the letters introduced into evidence it would appear that the action was abandoned.) Finally, despairing in his attempt to locate premises for the license, he sought rental of a building located near the center of the municipality. That site became the object of his latest application for transfer as he began measures to obtain municipal approval for its use. However, difficulties in obtaining a hearing date from the Board of Adjustment, together with further difficulties, compounded by a two-months absence of the owner, deferred the actual hearing date to August 1972. He failed to notify adjacent owners of his application in the manner required by law, so the August hearing was abortive and the matter was adjourned until the September meeting. Prior thereto the Committee denied appellant's application for renewal.

On cross examination appellant admitted he was not present at the initial hearing on his applications for renewal and transfer held by the Committee in June 1972, nor did he have any written agreement for the rental of the proposed location. He did appear at the July meeting when he was given sixty days to secure a variance as a condition to the transfer. He admitted not exhibiting the lease to the Committee at its September meeting.

Martin Wilson, testifying on behalf of appellant, stated that he had occasion to work for appellant for a few hours once and thus became acquainted with him. He recalled hearing a response from a Mr. Perini (a member of the Committee) to a question about liquor establishments in the community. Perini is alleged to have said "There won't be any bar as long as the man got the liquor license that got it" (presumably referring to appellant). He was vague as to the time and place of that conversation.

John A. Perini (a member of the Committee) called by appellant, testified that Cooke never applied for a transfer. He had bought a defunct license in premises not in operation. He admitted the remark alleged to have been made by Wilson could have been made, but he had no recollection of it.

Albert M. Maraziti testified that he is the owner of the premises on which appellant has attempted to locate the license. Those premises consist of a three-story cement block building, located eight or nine hundred feet south of the center of the Township. Although he had given appellant permission to apply for a variance in his name, he was at none of the meetings. He had been away in California during June and July of 1972, but the lease had been prepared before his departure; however, it had not been signed.

Appellant's wife, Glenet Cooke, testified that she was present at the meeting of the Committee held in June and paid the necessary license renewal fees of \$518 to the Township Clerk. She admitted that the Committee directed her husband to attend the next meeting and produce the lease for the property.

Committeeman John A. Perini, recalled, testified in explanation of his attitude concerning appellant that, initially, he favored cooperation with appellant but later events proved that appellant was uncooperative in providing information and documentation necessary for the consideration of the application. Appellant was very lax. The Committee voted unanimously to deny the said applications. On cross examination he admitted appellant had been thrice denied in previous transfer attempts.

The Committee introduced the testimony of Mayor Roland B. Brunner who, in recalling the chronology of appellant's application, stated that a sixty-day period was given him to secure a variance for the proposed location and to produce an executed lease for the premises. The failure of appellant to provide both resulted in the resolution of denial. He affirmed that there are no "C" licenses in the Township but there is a need for a restaurant with a liquor license.

Robert E. Fergus (a Committeeman) testified that he is also on the local Planning Board. There is a traffic interchange of Route 80 now located in the Township. That route is an interstate highway. He stated that repeated requests were made of appellant at Committee meetings for the production of a lease or evidence of a right to use the premises. The rejection of appellant's application was essentially based on his failure to provide such proofs. On cross examination he admitted there were three other applicants for a liquor license. He repeated the several requests made to Cooke for production of some evidence indicating the present right to use the subject premises, the ineffective notices submitted in conjunction with the application before the Board of Adjustment, and Cooke's admission that he had not done his "homework."

The factual background as elicited from witnesses and emphasized by counsel has been set forth in detail because of the bizarre circumstances leading to the rejecting resolution. Quite apparently the Township is typical of a small rural community where the pace of life is rather slow, with the government reluctantly moving away from its historical past. Hence, with the same legal principles applicable to such communities, the subject application must be viewed in light of all surrounding facts.

It is well established that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Bumball v. Burnett, 115 N.J.L. 254 (1935). No one has a right to demand a license which is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382 (1906).

The municipal issuing authority has within its sound discretion the authority, in the first instance, to decide whether an applicant is worthy of his license. However, such exercise of discretion must be based upon valid and substantial grounds and may not be used capriciously. If such denial is not based on reasonable grounds, it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; B & L Tavern, Inc. v. Bayonne, Bulletin 1459, Item 1; Slobodian v. Passaic, Bulletin 1855, Item 1.

It is elementary that the holder of a license or privilege acquired through his investment therein an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). The denial of renewal of a license is an extreme measure and the authority to deny same should be exercised with great caution. Heide's Tavern, Inc. v. South Amboy, Bulletin 2009, Item 1.

It should also be emphasized that the mere non-user will not of itself void a license. Re Tarantola, Bulletin 570, Item 5. In Lethe v. North Bergen, Bulletin 1537, Item 2, this Division reversed a municipality's refusal to renew a license after a period of non-use for three years.

The sad history of appellant's attempts to secure a situs for his license over a nine-year period is replete with illustrations of crass indifference, lack of energy, cooperation and communication. Having received municipal approval for transfer to a location identified as "Buttonball", he exhibited a characteristic lack of concern with the difficulties that situation created, and thereafter returned to the municipality seeking leave to find some other location. Even following the annual renewal date of his license for the current term, he approached the variance requirement problem with such unconcern that he did not bother to ascertain the basic requirements of public notice for that procedure. When asked to produce a copy of a lease he alleged that he had for the proposed site, he acted disdainful of the Committee's inquiry. He now uses the owners two months absence from this State to justify his refusal to comply with Committee's directive. The long record of appellant's lack of cooperation resulted in exasperation by the members of the Committee and their ultimate action with respect thereto.

However, the Committee is not without fault in the sense that it allowed appellant to bask in the sunshine of its apparent unconcern. For the almost nine years preceding the present denial it had repeatedly renewed the license, even including the immediate past license period. In consequence, appellant has paid perhaps more than three thousand dollars in license fees without reaping any benefit whatever. Only the recent advent of Route 80 being completed through part of the Township created a demand for the license and, as one of the Committeemen put it, a restaurant with a bar is now needed. With such change in the economic pressures surrounding a license, the Committee's prior indulgence to appellant has now been replaced by its affirmative action in denying the said applications.

I believe that the best interests of the public, and in the further interest of fairness, it would dictate that appellant be permitted the opportunity of crystalizing his efforts to create the locus of his license within the conditions as hereinbelow set forth. Cf. Stockton Hotel Operating Co., Inc. v. Sea Girt, Bulletin 1709, Item 1; Clover Leaf Cafe, Inc. v. Gloucester, Bulletin 2062, Item 1.

It is therefore recommended that an order be entered reversing the action of the Committee and directing it to grant the application of appellant for renewal of the said license, but the license shall not actually be issued to appellant until and unless the following conditions are met:

- (a) That appellant promptly apply for and obtain necessary municipal permission for use of subject property for license purposes;

- (b) If such municipal approval is received, the building is thereupon converted in accordance with the plans submitted;
- (c) The business to be conducted under the license shall be in full and complete operation by and before the expiration of ninety days from the date of this said order;
- (d) Upon compliance with the above conditions, and of all statutory requirements, the said license shall be endorsed and delivered to appellant;
- (e) If municipal approval for use of the site is not given or if the building construction has not been completed with the licensed business in full operation within the time set forth herein, the license shall thereupon be cancelled.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript, exhibits and Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 2nd day of March 1973,

ORDERED that the action of respondent be and the same is hereby reversed and that respondent be and is hereby ordered to renew appellant's plenary retail consumption license for the 1972-73 license period nunc pro tunc in accordance with the application filed therefor; and it is further

ORDERED that the said license shall be retained by the Township Committee and shall not be actually issued to appellant until and unless there is compliance with the following conditions:

- (a) That appellant promptly apply for and obtain necessary municipal permission for use of subject property for license purposes;
- (b) If such municipal approval is received, the building is thereupon converted in accordance with the plans submitted;
- (c) The business to be conducted under the license shall be in full and complete operation by and before the expiration of ninety days from the date of the entry of the order herein;
- (d) Upon compliance with the above conditions, and of all statutory requirements, the said license shall be endorsed and delivered to appellant:

- (e) If municipal approval for use of the site is not granted, or if the building construction has not been completed, and the licensed business is not in full operation within the time set forth herein, or any extension of time thereof granted by the Committee or the Director of this Division, the license shall, thereupon, be cancelled.

ROBERT E. BOWER
DIRECTOR

5. APPELLATE DECISIONS - JACKSON v. NEWARK - SUPPLEMENTAL ORDER.

Ruby P. Jackson,	:	
	:	On Appeal
Appellant,	:	
	:	SUPPLEMENTAL ORDER
v.	:	
	:	
Municipal Board of Alcoholic	:	
Beverage Control of the City	:	
of Newark,	:	
	:	
Respondent.	:	
.....		
Leon Sachs, Esq., Attorney for Appellant.		
William H. Walls, Esq., by Althea A. Lester, Esq.,		
Attorney for Respondent.		

BY THE DIRECTOR:

On October 22, 1971 Conclusions and Order were entered herein affirming the action of the respondent Board of Alcoholic Beverage Control of the City of Newark which revoked her Plenary Retail Consumption License on April 28, 1971 and thereafter denied renewal of her application for the 1971-72 licensing period. By the said Order, I also vacated my Order of June 23, 1971 staying the Board's Order of revocation and also dismissing the said appeal. Re Jackson v. Newark, Bulletin 2016, Item 2.

Upon appeal filed, the Appellate Division of the Superior Court stayed the operation of my Order until the determination of the appeal. On December 20, 1972, the Court affirmed my Order revoking the appellant's license and the subsequent affirmance of the Board's denial of her application for renewal. Re Jackson v. Newark, Superior Court of N.J., Appellate Division A-369-71, decided December 20, 1972 (not officially reported).

It appears that the appellant has not filed an application for renewal of her license for the current licensing period and is no longer in operation. Nevertheless, for record and disqualification purposes, the revocation heretofore imposed by the Board may now be reimposed.

Accordingly, it is on this 5th day of March, 1973

ORDERED that Plenary Retail Consumption License C-264 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ruby P. Jackson for the 1971-72 licensing period for premises 112 Springfield Avenue, Newark be and the same is hereby revoked nunc pro tunc as of 2:00 a.m. June 30, 1971.

ROBERT E. BOWER
DIRECTOR

6. APPELLATE DECISIONS - BRUNOSKI v. EAST PATERSON - APPEAL DISMISSED PENDING FURTHER ORDER.

Thomas and Rosalie Brunoski,)
 t/a Tom's Liquors,)
 Appellants,)
 v.)
 Mayor and Council of the Borough)
 of East Paterson, *)
 Respondent.)

O R D E R

 Walter J. Tencza, Esq., Attorney for Appellants
 Ferrara, Glock, & Spector, Esqs., by Stephen R. Spector, Esq.,
 Attorneys for Respondent

BY THE DIRECTOR:

Appellants appeal from the action of the respondent which by resolution dated November 2, 1972, suspended their license for sixty days upon finding them guilty of a sale to a minor, in violation of Rule 1 of State Regulation No. 20.

Prior to the hearing, by resolution dated February 1, 1973, the respondent reduced the said penalty to a suspension of license for a period of thirty days. The attorney for appellants now advises me that they desire to withdraw the appeal and make application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Good cause appearing, I shall dismiss the appeal, but continue the stay of the suspension pending my consideration of their application for the imposition of a fine in lieu of suspension.

Accordingly, it is, on this 14th day of March 1973,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the suspension heretofore imposed upon the appellants herein by the respondent Mayor and Council of the * Borough of East Paterson be and the same is hereby stayed, pending my consideration of appellants' application for the imposition of a fine in lieu of suspension, and until the entry of a further order herein.

*now Borough of Elmwood Park

Robert E. Bower
 Director

7. STATE LICENSES - NEW APPLICATIONS FILED.

Lobar Fine Foods, Inc., 3128 Bridge Avenue, Point Pleasant, N. J.
 Application filed April 4, 1973 for person-to-person and place-to-place transfer of Limited Wholesale License WL-10 from Bay Distributors, Inc., 11 James Street, Toms River, N. J.

Kern Distributing Co., Inc., Bordentown Ave., Sayreville, N. J.
 Application filed April 4, 1973 for place-to-place transfer of Limited Wholesale License W-45 from 69-73 Lee Ave., Haledon, N. J.

Robert E. Bower
 Robert E. Bower
 Director